



DEPARTMENT OF THE NAVY
SPACE AND NAVAL WARFARE SYSTEMS COMMAND
WASHINGTON, D.C. 20363-5100

IN REPLY REFER TO:

SPAWARINST 12713.1F
SPAWAR 08-72
19 October 1990

SPAWAR INSTRUCTION 12713.1F

From: Commander, Space and Naval Warfare Systems Command

Subj: EQUAL EMPLOYMENT OPPORTUNITY (EEO) DISCRIMINATION
COMPLAINTS

Ref: (a) OCPMINST 12713.1 (CPI 713)
(b) 29 CFR Part 1613
(c) EEOC MD 107 of 1 Sep 87
(d) 5 CFR Part 1201

Encl: (1) EEO Complaints Procedures

1. Purpose. To provide procedures, as outlined in enclosure (1), for processing complaints of discrimination on the basis of race, color, religion, sex, national origin, age, physical or mental handicap, or retaliation (reprisal) for prior EEO complaint involvement.

2. Cancellation. SPAWARINST 12713.1E of 20 December 1985 is hereby cancelled and superseded.

3. Background

a. This instruction provides policy and guidance for implementing discrimination complaint procedures for the Space and Naval Warfare Systems Command (SPAWAR) headquarters, Research and Development (R&D) Centers, and Engineering Centers. Since this instruction implements regulatory requirements, it should be read in conjunction with references (a) and (b).

b. By reference (c), the Equal Employment Opportunity Commission (EEOC) issued guidance for managing the Federal discrimination complaints program. Changes to reference (b) were published 30 October 1987, effective 30 November 1987, which supersede some of the guidance provided by reference (c). Reference (c) may be consulted but should not be substituted for regulation, statute, reference (a), or this instruction.

c. Reference (d) provides the regulations of the U.S. Merit Systems Protection Board (MSPB or "the Board") for processing allegations of discrimination in actions appealable to the Board, i.e., mixed case appeals.

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4. Policy

a. It is SPAWAR's policy to provide equal employment opportunity for all its employees, regardless of race, color, religion, sex, national origin, age, or handicapping conditions. Equal employment opportunity shall not be denied any employee because of opposition to any unlawful discriminatory employment practice or because the employee has charged, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the EEO complaints process.

b. All complaints of discrimination will be processed and resolved as expeditiously as possible. Emphasis shall be placed on informal resolution of all complaints at the lowest possible level.

c. Disciplinary or corrective action will be considered when any supervisor or individual discriminates against a SPAWAR employee, former employee, or applicant. Personnel management policies or practices which have an unlawful discriminatory impact on a protected group of employees, former employees, or applicants shall be modified.

5. Responsibilities

a. Equal Employment Opportunity Officer (EEOO). Commander, Space and Naval Warfare Systems Command (COMSPAWARSYSCOM) serves as the Equal Employment Opportunity Officer and has ultimate line responsibility on issues of discrimination.

b. Command Deputy Equal Employment Opportunity Officer (CDEEOO). The principal advisor to COMSPAWARSYSCOM on all EEO matters, including the resources required in the command to manage effectively the complaint process. Provides guidance and assistance to field activities' civilian and military personnel responsible for processing discrimination complaints to ensure appropriate adjustment of complaints is attempted and Department of the Navy (DON) goals for timely complaint processing are met. Closely monitors status of complaints at field activities to ensure that the discrimination complaint process is operated effectively and efficiently throughout the command. Notifies the field activities' EEOOs of complaints requiring action. Briefs COMSPAWARSYSCOM semiannually on the status of discrimination complaints process within the command.

c. Equal Employment Opportunity Branch Head (SPAWAR 08-72). The EEO Branch Head is responsible for: providing operational support and advice to the CDEEOO; managing the discrimination complaint program, which encompasses the headquarters-level program including counseling and complaints processing and

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direction/guidance to EEO counselors and assistance to EEO investigators at headquarters level; and under the policy guidance of the CDEEO, command-wide development, administration, oversight, and evaluation of EEO policies, programs, and services. The EEO Branch Head, or his/her designee, will conduct EEO program reviews and provide assistance to SPAWAR activities.

d. Discrimination Complaints Manager (SPAWAR 08-721). Prepares all official correspondence regarding headquarters complaints and complaints escalated to the command level. Serves as primary point of contact for all headquarters complaints and inquiries addressed to the Command on activity complaints. Monitors timeliness and status of complaints process at headquarters and field activities and submits recommendations, as appropriate, to reduce processing time. Manages headquarters EEO counseling program. Provides guidance, assistance, and advice to field activities on complaint matters. Coordinates data from field and consolidates for submission to Chief of Naval Operations (CNO) (OP-14).

e. Office of Counsel. The Command's legal representative at all hearings or other proceedings. Reviews and provides comments on all official complaints correspondence as designated by the EEEO, including, but not limited to, proposed disposition letters and final agency decisions; and any agreement drafted in settlement of a formal complaint prior to issuance. Counsel will also provide guidance, when requested, on accept/reject letters. Reviews the investigative file before being forwarded to the Employee Appeals Review Board for final agency decision and provides comments as needed. Prepares and issues briefs on all complaints appealed to the Equal Employment Opportunity Commission, Office of Review and Appeals (ORA). Field activities that do not have an Office of Counsel should consult with SPAWAR headquarters' Counsel on these matters. Provides guidance when requested by EEO counselors on requirements and procedures.

f. Commanders or Commanding Officers. The head of each SPAWAR activity employing civilian personnel is designated the Equal Employment Opportunity Officer (EEEO). The EEEO shall:

(1) Ensure activity coverage under an appropriate local instruction implementing the policies and procedures of the Department of the Navy and SPAWAR Discrimination Complaints Process;

(2) Allocate sufficient resources to manage and operate the discrimination complaints process as required by the DON and this instruction;

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(3) Ensure that supervisors and managers understand and are evaluated on meeting their responsibilities in the discrimination complaint process;

(4) Designate an adequate number of qualified, trained, and certified EEO counselors;

(5) Publicize and communicate discrimination complaints procedures, including designated EEO counselors, to all employees, former employees, and applicants for employment; including posting names and telephone numbers of EEO counselors on all official bulletin boards;

(6) Attempt early resolution of complaints;

(7) Accept, reject, cancel, and/or settle discrimination complaints following the guidance contained in the DON and this instruction;

(8) Ensure that the discrimination complaint case file contains a complete record, including the counselor's report and an adequate investigative report where required;

(9) Issue proposed dispositions of discrimination complaints and certifications of offers of full relief and, when appropriate, final agency decisions;

(10) Meet the Department of the Navy goals for timeliness of discrimination complaint processing at the activity level;

(11) Modify policies and practices found to have an unlawful discriminatory impact;

(12) Ensure that disciplinary or other administrative corrective action is considered when individuals are found to have unlawfully discriminated; and

(13) Ensure that the records required by paragraph 17 of reference (a) are maintained by the activity, EEO office, or servicing civilian personnel office, as appropriate.

g. Deputy Equal Employment Opportunity Officer (DEEOO). The DEEOO is the principal program manager and technical advisor to the EEOO. Within the authority delegated by the EEOO, which may include authority to sign for the EEOO "by direction," the DEEOO shall:

(1) Manage and evaluate the discrimination complaints process at the activity level and advise the EEOO on matters that require attention;

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(2) Advise the EEOO regarding the availability of adequate resources to manage and implement effectively the Discrimination Complaints Process at the activity level;

(3) Arrange for an adequate number of counselors;

(4) Assess the knowledge and skills of each counselor and certify that needed training has been completed prior to assigning him or her to counseling duties;

(5) Supervise counseling duties;

(6) Work closely with appropriate members of management and management support staff;

(7) Ensure that all complaints are processed as expeditiously as possible in accordance with enclosure (1) and that all correspondence is properly reviewed and coordinated prior to release;

(8) Provide copies of all accept/reject letters, proposed disposition letters, and activity final agency decision letters to SPAWAR 08-72 and if the activity does not have an internal Office of Counsel, subject letters should also be sent to SPAWAR OOC;

(9) Provide monthly status reports on complaints and a semiannual complaints report to SPAWAR 08-72;

(10) Attempt to negotiate informal settlements of complaints; and

(11) If the Commander/Commanding Officer is found to have been a responsible management official in the complaint by the Discrimination Complaints Investigation Component (DCIC), escalate the complaint to SPAWAR headquarters for further processing.

h. EEO Counselors

(1) Advise employees, former employees, or applicants seeking counseling of their rights under this instruction and consult with the EEO Branch Head, the DEEOO, the Civilian Personnel (CPO) Office, or Counsel (as appropriate) on employees' rights under this instruction when necessary;

(2) Interview supervisors and employees, and review information and records concerning allegations of discrimination;

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(3) Attempt to resolve allegations of discrimination at the precomplaint stage;

(4) Upon completion of counseling, notify the employee, former employee, or applicant of his or her right to file a formal complaint by issuing a Notice of Final Interview;

(5) With the DEEO's approval, issue an employee, former employee, or applicant a Notice of Right to File a Discrimination Complaint on or immediately before the 21st day after initial contact when counseling cannot be completed within 21 days;

(6) Forward the completed Counselor's Report and Counselor's Checklist to the DEEO upon notification that a formal complaint has been filed; and

(7) Forward the EEO Counselor's Checklist to the DEEO if no formal complaint is filed.

i. Civilian Personnel Office(r)s (CPO). The servicing CPO shall:

(1) Provide advice and guidance to employees, managers, and EEO officials on civilian personnel policy which is consistent with this instruction;

(2) Cooperate with EEO counselors, investigators, and DEEOs in providing information and access to records necessary to investigate and resolve allegations of discrimination;

(3) Provide management representation when requested; and

(4) Retain records of personnel actions (e.g., appointments, merit staffing, reductions-in-force, training, performance appraisals, and disciplinary actions), as prescribed by paragraph 17 of reference (a).

j. Managers and Supervisors. Supervisors are responsible for:

(1) Ensuring that their actions are free from discrimination based on race, color, religion, sex, national origin, age, handicapping condition, or reprisal because of involvement with a discrimination complaint at any stage of the process or opposition to an unlawful discriminatory employment practice;

(2) Taking action to ensure a workplace free from a hostile and offensive environment, including sexual harassment,

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and taking immediate steps to correct such situations should they occur;

(3) Monitoring employee conduct and taking corrective action as required;

(4) Cooperating with EEO program officials, counselors, and investigators, and the designated management representative, as required;

(5) Seeking reasonable resolution of potential complaints during the counseling stage, and cooperating with efforts to settle formal complaints; and

(6) Ensuring counselors in collateral duty assignments will be allowed sufficient time to complete a counseling assignment and that complainants have a reasonable amount of time, as defined in enclosure (1), to present a complaint.

k. Employees. Employees are responsible for:

(1) Conducting themselves in a manner consistent with the principles of EEO and which does not reflect adversely on the Department of the Navy; and

(2) Cooperating with EEO program officials, counselors, and investigators as required.

l. Complainants. Complainants are responsible for:

(1) Complying with the time limits and procedures specified by this instruction;

(2) Providing the information necessary for counseling and processing of any formal complaint filed; and

(3) Cooperating with EEO program officials, counselors, and investigators as required.

6. Avoidance of Delay. Individual discrimination complaints shall be processed promptly. All actions should be taken, whenever possible, within the time frames specified in enclosure (1). The processing time frames specified in enclosure (1) are goals for internal management purposes only. The failure to meet processing time frames does not entitle a complainant to any form of relief.

7. Settlement of Complaints. Adjustment of complaints by settlement agreement may occur at any stage of processing. Settlement is in the best interest of the Department of the Navy

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when the terms are practicable. Reasonable efforts should be made to achieve early settlement of discrimination complaints at the lowest possible level. A settlement agreement resolving an allegation of discrimination under Title VII of the Civil Rights Act of 1964, as amended (Title VII), or the Rehabilitation Act of 1973, as amended, may include an award of backpay, attorney fees, or other appropriate relief, but may not include interest on backpay and attorney fees. Attorney fees and liquidated damages are not provided for under the Age Discrimination in Employment Act of 1967, as amended. If unresolved under the settlement terms, the issue of an award of attorney fees or of the amount to be awarded may be the subject of an appeal to EEOC.

8. Action. All the addressees shall carry out the responsibilities and procedures in this instruction.



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Rear Admiral, U.S. Navy

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PROCESSING INDIVIDUAL COMPLAINTS OF DISCRIMINATION

1. Precomplaint Counseling

a. The command EEOO and each activity EEOO are responsible for ensuring an adequate number of qualified EEO counselors are available to counsel employees. Pertinent information on counselors and the process for filing a complaint shall be posted in a conspicuous place. The DEEOO shall provide information regarding complaint procedures and the location and availability of EEO counselors as requested.

b. An employee, former employee, or applicant for employment who believes that he or she has been discriminated against because of race, color, religion, sex, national origin, age, handicapping condition, or reprisal must consult with an Equal Employment Opportunity (EEO) counselor to try to resolve the matter.

c. The matter must be brought to the attention of the EEO counselor within 30 calendar days from the date the alleged act occurred, the effective date of an alleged discriminatory personnel action, or the date that the aggrieved person knew or reasonably should have known that it occurred. The time limit may be extended by the EEOO when, through no fault of the complainant, counselor contact was delayed.

d. A formal complaint filed before the individual has attempted to consult with a counselor shall be returned without action at that time, and the individual shall be advised to consult with a counselor in order to properly initiate consideration of his or her concerns.

2. Precomplaint Counseling. The importance of the EEO counselor cannot be overemphasized. The nature and thoroughness of counseling affects the entire processing of the complaint. Therefore, the EEOO shall ensure that all employees provide full cooperation to the counselor in the performance of his or her duties, and that the counselor is assured of freedom from restraint, interference, coercion, discrimination, or reprisal in connection with duties performed under CPI 713.

a. Notice of Complainant's Rights. Upon initial contact, or as soon as practicable thereafter, the counselor must advise each person seeking counseling of his or her rights under CPI 713 as follows:

(1) The relationship between the complaint process and the administrative grievance system.

(2) The requirement to make an election between the complaint process and a negotiated procedure, where applicable, and the consequences of such an election.

(3) Where applicable, the differences between a mixed case complaint processed under CPI 713, a mixed case appeal processed under the U.S. Merit Systems Protection Board (MSPB), and a mixed case processed under a negotiated grievance procedure, the right to make an election between these processes, and the consequences of such an election.

(4) The right to file a formal complaint and a civil action.

(5) The right to be free from reprisal and what action to take if he or she believes reprisal has occurred.

(6) The requirements and procedures of the various complaint processes of CPI 713 (i.e., individual, mixed case, class, and age complaints), as appropriate, based on the allegations raised during counseling.

(7) The right to representation, including the responsibility to notify the counselor or EEEO, in writing, of any representative obtained.

(8) The right to remain anonymous during the informal process.

b. Conflicts of Interest

(1) A counselor may not accept any request for counseling that would result in a conflict of interest. A conflict of interest exists when the counselor:

(a) Was personally involved in the action of concern to the aggrieved person (e.g., a candidate for the same vacancy for which the aggrieved person applied).

(b) Supervises or is supervised by the aggrieved person.

(c) Otherwise has a relationship with the aggrieved person which could impair impartial resolution efforts.

(d) In order to properly pursue the aggrieved person's concern would have access to documents concerning the aggrieved person which are of personal interest to the counselor.

(e) Is in the same organizational unit as the complainant.

(2) The counselor must not be involved in the processing of the formal complaint. The counselor may not serve as the complainant's representative, nor advise the complainant concerning the formal complaint. This does not preclude being

interviewed by an investigator concerning the case, or being called to testify at a hearing.

c. Informal Resolution Effort. Counselors may make whatever inquiry is reasonably necessary to resolve the matter informally. All personnel contacted by a counselor must make themselves available to, and cooperate with, a counselor in attempts at resolution of the complaint.

(1) Counselors will have access to information from personnel records concerning the matters which have been presented to the counselor by the aggrieved person; however, counselors will comply with the procedural requirements established by the Command or activity in gaining access to such information. While the counselor's informal resolution effort constitutes "a need for the record in the performance of their duties" in satisfaction of the Privacy Act of 1974, 5 U.S.C. Section 552a(b)(1), counselors should not provide copies of materials from such records to aggrieved persons, either as enclosures to the counselor's report or otherwise. Information from protected personnel record systems should be reduced to a summary (e.g., years of experience, level of education, and/or awards for candidate A, candidate B, etc.) with all names except that of the aggrieved person deleted before discussion with the aggrieved person or inclusion in a counselor's report.

(2) All individuals contacted by a counselor will be advised that they may have a representative of their own choosing present during the interview and will be accorded a reasonable opportunity to arrange for the attendance of that representative prior to meeting with the counselor.

(3) As far as is practicable, the EEO counselor shall conduct the final interview with the aggrieved person no later than 21 calendar days after the date on which the matter was called to the counselor's attention. The counselor shall advise the aggrieved person, in writing, at the final interview of the right to file a formal complaint of discrimination with the Command or activity if the matter has not been resolved and of the time limits governing the acceptance of a complaint. If a resolution has not been reached but appears imminent, the time limit of 21 days may be exceeded. A counselor must advise the DEEOO when the final interview will not be conducted within the 21-day period and the reasons therefore, and will make every effort to complete such counseling as quickly as possible.

(4) The counselor will be required to keep notes on the counseling activities. If a formal complaint is filed, the counselor, upon notification by the DEEOO, shall submit a written report to the DEEOO, summarizing the counseling of that person concerning the merits of the matters. The DEEOO will review the counselor's report and forward a copy to the aggrieved person.

d. Confidentiality. The EEO counselor is not permitted to reveal the identity of the aggrieved person who is being counseled, except when authorized to do so by the person, until the activity has received a formal complaint of discrimination from that person. This serves to protect the identity of an employee who wants to discuss a problem, but who does not want the attention of management. However, during the counseling, the Responsible Management Official (RMO) must be adequately informed of any and all charges made against the RMO and must be afforded a full and fair opportunity to respond to such charges.

e. Rights of the Responsible Management Official (RMO). If an aggrieved employee or applicant has named or otherwise identified an individual who is a current employee as being responsible for an alleged act of discrimination, the counselor must solicit the view of that responsible management official unless the counselor otherwise obtains and provides information to the aggrieved person that exonerates the RMO to the clear satisfaction of that aggrieved person. Preliminary to the discussion of the matter with such an RMO, the counselor should advise the individual orally, whether in person or by telephone, of the nature of the matter that the counselor wishes to discuss, the name of the aggrieved person (unless confidentiality has been requested by the aggrieved person), and that the individual contacted by a counselor is permitted to have a representative present during the counseling interview. During the interview with the RMO, the counselor should inform the individual of the nature of the allegations made concerning him/her and should summarize his/her response in the counselor's report. If the RMO wishes, (s)he may prepare a memorandum for the record concerning the meeting and provide it to the counselor for inclusion as an enclosure to the counselor's report.

f. Informal Management Inquiry. As an additional attempt at early resolution, the EEOC can supplement counseling with an informal management inquiry. It is recommended that the management inquiry begin within 14 days of the date a formal complaint was filed. The management inquiry can be conducted simultaneously with the formal investigation. Because management inquiries are JAG manual type expedited forms of investigation, most likely a report will be issued well in advance of completion of the DCIC investigation, which will give the EEOC the opportunity to informally resolve the complaint in advance, if the findings warrant it.

3. Filing and Presentation of Complaint

a. The complainant may file a formal complaint any time after 21 days from the date the EEO counselor was contacted, but not later than 15 calendar days after receipt of the notice of final interview with the EEO counselor. Within SPAWAR headquarters, the formal complaint must be filed in writing to the

Commander, Space and Naval Warfare Systems Command; the Command Deputy Equal Employment Opportunity Officer; or the Head, EEO Branch. Complaints filed at field activities should be addressed to the Commanding Officer or the Deputy Equal Employment Opportunity Officer. Filing is date of postmark if mailed or date of receipt if delivered. All formal complaints will be forwarded to the DEEOO, who will maintain a formal official log-in system. Complaints also may be sent to the Director of Equal Employment Opportunity, Assistant Secretary of the Navy (Manpower and Reserve Affairs), Department of the Navy or the Secretary of the Navy; however, if filed with either of those individuals, the complaint will be forwarded to the activity head for processing.

b. The EEOO can extend these time limits when:

(1) The complainant shows that (s)he was not notified of them and was not otherwise aware of them, or that (s)he was prevented by circumstances beyond his/her control from submitting the matter within the time limits.

(2) For other reasons considered sufficient.

(3) The DEEOO will prepare a written report documenting the rationale for a waiver of time limits as provided herein.

c. Two or more complaints of discrimination filed by employees or applicants for employment with an activity consisting of substantially similar allegations of discrimination may, with the written permission of the complainants, be consolidated by the DEEOO. Likewise, two or more individual complaints from the same employee or applicant for employment may, at the discretion of the activity, be joined for processing after notifying the complainant that the complaints will be processed jointly.

d. An aggrieved person shall have a reasonable amount of official time, if (s)he is otherwise in an active duty status, to present his/her complaint. If the aggrieved person is an employee and designated another employee as a representative, the representative shall have a reasonable amount of official time, if (s)he is in an active duty status, in representing the aggrieved person during the consultation with the EEO counselor and in the presentation (filing) of the formal complaint.

e. The amount of official time to be allowed a complainant or representative should be determined by an analysis of the amount of time required to prepare and present the complaint. Factors to be considered include the number of distinct issues, the complexity of the issues, and the period of time covered by the complaint.

f. At every stage of the complaints process, the complainant has the right to a representative of his/her choice. The activity

may deny the complainant's designation of a particular employee of the Command or activity when the representation would contribute appreciably to the neglect of that employee's regular duties or would result in a conflict of interest. The Command or activity may also deny the complainant's designation of a particular employee of the Command or activity when representation would lead to a conflict of interest.

4. Complaint Captions. The DEEOO shall ensure that all complaints which are accepted for processing identify the complainant and the head of the agency in which the complaint was filed. Therefore, regardless of with whom the complaint is filed, all Department of the Navy formal complaints, and any correspondence pertaining thereto, will be captioned as follows:

(Complainant's Name) v. (Name), Secretary of the Navy

a. Docket Numbers. The DEEOO will assign a Department of the Navy docket number to each newly filed discrimination complaint which must be included in any subsequent document or correspondence pertaining thereto. Each activity will number its discrimination complaints sequentially using the following method:

(1) The letters "DON" to designate the Department of the Navy.

(a) Two-digit Fiscal Year; such as 90.

(b) Five-digit Unit Identification Code (UIC).

(c) Three-digit Case Number, starting with 001 at the beginning of each fiscal year.

(2) Class Complaints should be designated by the letter "C" after the three-digit Case Number.

b. Defining the Issues

(1) EEEOs should not accept for investigation any allegation which is so vague or general that no specific issue and/or basis can be defined for investigation. Any new matters raised in the complaint which have not been brought to the attention of the EEO counselor will not be accepted for investigation, and will be referred back to the complainant with instructions to bring those new matters to the attention of an EEO counselor immediately.

(2) If vague or general allegations cannot be made more specific by reference to the EEO counselor's report, the EEEO should give the complainant an opportunity to furnish more specific information in writing to define the issue and/or basis which the individual is raising. The complainant shall be

provided written notice that further specific information is required, and that if he or she fails to provide written clarification of the allegations within 15 calendar days of receipt of such a notice, the complaint may be cancelled for failure to prosecute.

c. Acceptance. The EEOO of the activity in which the complaint arose shall accept the complaint for processing if the employee, former employee, or applicant alleges that he or she has been discriminated against because of race, color, religion, sex, national origin, age, handicapping condition, and/or reprisal and:

(1) The complainant brought the matter to the attention of an EEO counselor within 30 calendar days of the:

(a) Date of the alleged discriminatory event.

(b) Effective date of an alleged discriminatory personnel action.

(c) Date that the aggrieved person knew or reasonably should have known of the discriminatory event or personnel action.

(2) The complainant or representative submitted the written complaint to an appropriate official within 15 calendar days after the date of receipt of the Notice of Final Interview, or Notice of Right to File a Complaint.

5. Rejection, Cancellation, or Referral of New Issues. A rejection or cancellation may not be based on an evaluation of the merits of the allegations. The EEOO shall provide written notice of the decision to reject or cancel all or part of a complaint to the complainant and the complainant's representative. The decision letter shall inform the complainant of the right to appeal the decision to the EEOC, the time limit for filing an appeal, and the complainant's right to file a civil action as described in paragraph 15 of CPI 713.

a. The EEOO shall reject a complaint that:

(1) Fails to state a claim under reference (b).

(2) States the same claim by that complainant that is pending before, or has been previously decided by, the Department of the Navy.

(3) Alleges that the agency or activity is proposing to take action that may be discriminatory.

(4) Is the basis of a pending civil action in a United States Court in which the complainant is a party.

(5) Is filed untimely, unless time limits were extended by the EEEO.

(6) The complainant elected to pursue under a negotiated grievance procedure as identified in paragraph 14 of reference (a) or by appealing to MSPB.

b. The EEEO shall cancel a complaint:

(1) That the complainant has failed to prosecute. An allegation or a complaint may be cancelled for failure to prosecute only after the complainant has been provided with a written notification to provide certain information or otherwise proceed with the complaint. The notification must also state that if the complainant has failed to satisfy this requirement within 15 calendar days of its receipt, the complaint may be cancelled for failure to prosecute. However, instead of cancelling for failure to prosecute, the complaint may be adjudicated if sufficient information for that purpose is available.

(2) If the complainant refuses to accept an offer of full relief in settlement of the complaint. The EEEO shall extend the offer, in writing; provide certification that the offer constitutes full relief for the complaint; and notify the complainant that if the offer is not accepted within 15 calendar days of its receipt, the complaint may be cancelled. In cases in which the EEEO is involved in the alleged discriminatory act, the certification of an offer of full relief shall be signed by an official at a higher level in the chain of command to the EEEO. An offer of full relief includes that relief to which a complainant would be entitled upon a finding of discrimination.

(3) If the complainant files a civil action on the same matter.

c. Complaints alleging reprisal because the Department of the Navy requested a reopening of an EEOC decision or petitioned for review of an MSPB decision in a mixed case may be rejected as not coming within the EEO purview. The Department of the Navy is exercising a regulatory right when pursuing either of these administrative appeal procedures.

d. The decision to reject must be forwarded by letter to the complainant or his or her representative; complainant must be advised of his/her right to appeal this decision to the Equal Employment Opportunity Commission within 20 calendar days of receipt of the letter of rejection.

e. After the issues have been defined, a determination will be made as to those issues which meet the criteria for acceptance. The DEEOO will advise the complainant, by letter, of those issues accepted for processing and those which have been rejected.

The statement of accepted issues will be specific. The letter will set forth the reason(s) for rejection or cancellation and the appeal rights to the Director, Office of Review and Appeals, Equal Employment Opportunity Commission, P.O. Box 19848, Washington, DC 20036, including the right to file a civil suit.

6. Investigation

a. Upon acceptance of a complaint, the DEEOO will immediately request that the Naval Civilian Personnel Center (NCPC) Discrimination Complaints Investigation Component assign an investigator. The investigator will investigate those issues accepted by the Command or activity and conduct a thorough review of all circumstances under which the alleged discrimination occurred, treatment of members of the complainant's group identified by the complainant, and policies related to the work situation. The investigative file must include affidavits of the complainant and of the RMO(s) and other witnesses. All employees are required to cooperate with the investigator.

b. The DEEOO will review the investigative report for completeness and request a supplemental report to address any deficiencies. If complainant is dissatisfied with the scope of the investigation, the DEEOO will decide whether a supplemental report is appropriate.

c. An RMO, whether identified at the time a formal complaint is filed or during the course of the investigation, must be given an opportunity to respond to any and all allegations made against him/her. In this respect, the investigator should interview and receive information from the RMO as many times as necessary to assure that the official has an opportunity to respond to all of the allegations. Pertinent documents (i.e., documents in which the official is identified and charged with discrimination or other wrongdoing) intended for placement in the investigative file, including the EEO counselor's report, the complaint, the complainant's affidavit, and other affidavits in which the RMO is named, must be made available to the official for this purpose. Names of, and identifying information on, persons other than the complainant and the RMO should be deleted from copies of documents shown to the RMO to protect such persons from unwarranted invasion of privacy.

7. Review of the Investigative Report. Within 14 calendar days of receipt of the investigative report, the DEEOO shall review the report and any other entries in the investigative file for sufficiency. If, after discussion with the DEEOO, it is determined that the report is deficient, a supplemental investigation to address specific deficiencies may be requested.

8. Adjustment of Complaint

a. The EEOO may adjust the complaint by:

(1) Entering into a settlement agreement.

(2) Accepting or modifying the DCIC's recommended findings and issuing his or her own proposed disposition of the complaint.

b. If neither of these actions have occurred, and the complainant has not received a proposed disposition within 35 days from the date the EEOO received the investigative report:

(1) The Commander, SPAWAR, shall require the EEOO to issue a proposed disposition based on the recommended findings of the DCIC.

(2) The complainant may request a decision from the Secretary of the Navy, with or without a hearing.

d. Opportunity for Informal Adjustment. Within 14 calendar days of receipt of the investigative report, the EEOO will issue a letter to the complainant which:

(1) Forwards a copy of the investigative report.

(2) Provides an opportunity for the complainant to meet with the EEOO or designee to discuss the investigative report and explore possible settlement of the complaint.

(3) Outlines procedures for appeal rights as described below.

e. If adjusted

(1) The terms of the settlement agreement shall be stated in writing and made a part of the complaint file, with a copy of the settlement agreement provided to the complainant and his or her representative.

(2) A settlement agreement represents the termination of the complaint.

(3) The DEEOO will complete a Disposition of Complaint of Discrimination Form (NAVSO 12713/3 [4/80]), attachment I-11 of Appendix I of reference (a).

f. If not adjusted the EEOO shall issue a proposed disposition letter if the:

(1) Complainant does not choose to meet to discuss the matter within the prescribed time frame.

(2) Parties cannot agree on the issues or settlement terms.

g. Complainant's Dissatisfaction with the Scope of the Investigation. If the complainant is dissatisfied with the scope of the investigation, this should be expressed in writing, and discussed at the informal adjustment meeting. The EEEO shall review and analyze the cause of the dissatisfaction and determine if a supplemental investigation is needed. Whatever disposition is taken, the point of dissatisfaction shall become a part of the official case file; however, this dissatisfaction shall not be accepted as a new discrimination complaint.

9. Settlement. Any settlement reached shall be reduced to writing, signed by both parties, and shall identify the allegations resolved. The settlement agreement is made part of the complaint file, with a copy to the complainant and his or her representative.

a. A "no-fault" settlement agreement may be reached at any stage of the process, as long as there has been no finding by the EEEO as to whether discrimination did or did not take place. The issue of discrimination is only noted in the settlement by a statement that the settlement does not admit discrimination.

b. Where the parties agree on a settlement of the complaint, but cannot agree on whether attorney fees or costs should be awarded, or on the amount of attorney fees, these issues may be severed from the settlement agreement and made the subject of an appeal to EEOC, ORA.

c. Noncompliance with Settlement Agreement. Any settlement agreement, knowingly and voluntarily agreed to by both parties, reached at any stage of the complaint process, shall be binding on both parties.

(1) If the complainant believes that the activity or command has failed to comply with the terms of a settlement agreement, the complainant:

(a) Shall notify the EEEO, in writing, of the alleged noncompliance with the settlement agreement, within 30 calendar days of when he or she knew or should have known of the alleged noncompliance. If the complainant believes the EEEO is personally failing to comply with the settlement agreement, the complainant shall notify the Commander, SPAWAR, in writing, with a copy to the EEEO.

(b) May further request that the terms of the settlement agreement be specifically implemented or, alternatively, that the complaint be reinstated for further processing from the point processing ceased under the terms of the settlement agreement.

(2) The Department of the Navy, upon receipt of the complainant's written allegation of noncompliance with the settlement agreement, shall have 30 calendar days in which to resolve the matter and to respond to the complainant in writing.

(3) The complainant may appeal to the EEOC ORA for a determination as to whether the Department of the Navy has complied with the terms of the settlement agreement if:

(a) After 30 calendar days from the date of the EEOC's receipt of the complainant's written allegations of noncompliance with the settlement agreement, the EEOC has not responded to the complainant, in writing.

(b) The complainant is not satisfied with the attempt to resolve the matter.

(4) Such an appeal may be filed with EEOC ORA 35 calendar days after service of the notification of allegations of noncompliance, but must be filed within 20 calendar days of receipt of the EEOC's determination.

(5) Prior to rendering its determination, the EEOC ORA may:

(a) Request that the parties submit whatever additional information or documentation it may deem necessary.

(b) Direct that an investigation or hearing on the matter be conducted, as may be appropriate.

(6) Upon determination that the settlement agreement has not been complied with, and the noncompliance is not attributable to acts or conduct of the complainant, EEOC ORA may:

(a) Order such compliance.

(b) Order that the complaint be reinstated for further processing from the point processing ceased under terms of the settlement agreement.

(7) Complaints that reprisal or further discrimination violate a settlement shall be processed as individual complaints, but not as a noncompliance allegation.

10. Proposed Disposition

a. Within 15 calendar days after meeting with the complainant to discuss the investigative report, or within 30 calendar days after receipt of the report if no meeting is requested, the EEOO shall notify the complainant, in writing, of the proposed disposition of the complaint, with provisions for appeal rights.

b. If the EEOO issues no proposed disposition within these 30 days, the recommended finding of the investigative report shall be adopted by the EEOO as the proposed disposition of the complaint. In this case, the EEOO shall:

(1) Issue to the complainant, without delay, a proposed disposition adopting the recommended findings, and notify the complainant of his or her right to a decision by the Secretary of the Navy with or without a hearing.

(2) In the event no proposed disposition letter is issued by the EEOO within the 30-day period, the complainant may request a decision from the Secretary of the Navy with or without a hearing.

c. Proposed Findings of No Discrimination

(1) When the EEOO proposes a finding of no discrimination, he or she will issue a proposed disposition letter to the complainant and representative which adopts or modifies the investigator's recommended findings.

(2) If the complainant does not respond within 15 calendar days from the date of receipt of the letter, or declines to meet or otherwise comment on the investigator's recommended finding, a final Department of the Navy decision will be issued, which provides the complainant with his or her right to appeal to EEOC ORA or file in U.S. District Court.

d. Recommended Finding of Discrimination. When the investigative report provides a recommended finding, the EEOO may accept the recommended finding, adjust the complaint by settlement agreement, or issue a proposed disposition different from that recommended. If the EEOO takes none of these actions within 30 calendar days after receipt of the investigative report, the recommended finding shall be adopted as the Department of the Navy's proposed disposition on the complaint and remedial and corrective action as described in reference (a) must be taken thereon.

11. Adoption of Proposed Disposition as the Final Decision of the Department of the Navy. If the complainant fails to notify the EEOO of his or her acceptance of the proposed disposition, or to

request a SECNAV decision within 15 calendar days after receipt of the proposed disposition letter, the EEOO shall issue a decision letter adopting the proposed disposition as the final Department of the Navy decision on the complaint. The final decision letter shall also include a notice to the complainant of the right to appeal to the EEOC or file a civil action. The DEEOO will complete a Disposition of Complaint of Discrimination Form (NAVSO 12713/3 [4/80]).

12. Request for a Decision by the Secretary of the Navy. Within 15 calendar days from receipt of a Notice of Proposed Disposition, or after 35 calendar days if no Notice of Proposed Disposition has been received, the complainant may request a decision by the Secretary of the Navy with or without a hearing. All requests for a decision by the Secretary of the Navy shall be submitted to the EEOO.

a. Decision Without a Hearing. If the complainant responds to a notification of proposed disposition with a request for a decision from the Secretary of the Navy without a hearing, the EEOO shall forward the case file immediately to the Employee Appeals Review Board (EARB), with a copy of the transmittal to the complainant and representative. The EARB will forward a recommended final decision to the Deputy Assistant Secretary of the Navy (Civilian Personnel Policy/Equal Employment Opportunity), who will issue the final decision on behalf of SECNAV.

b. Decision With a Hearing. If the complainant responds to a notification of proposed disposition with a request for a decision from the Secretary of the Navy with a hearing, the EEOO shall:

(1) Request the assignment of an administrative judge from the appropriate EEOC District Office.

(2) Forward a copy of the case file to the cognizant EEOC District Office, with all documents acquired up to that point in the process organized, tabbed, indexed, and numbered as required by EEOC MD-107, and indicating that the final report is to be sent to the:

Secretary of the Navy
Employee Appeals Review Board
801 N. Randolph Street, Rm. 720
Arlington, Virginia 22203

(3) Designate and provide written notice of the requested hearing to the Department of the Navy management representative. The notice will include a copy of the complaint file, a summary of informal adjustment efforts, and any restrictions on the representative's authority to agree to a settlement of the complaint on behalf of the EEOO.

(4) Advise the designated EEOC administrative judge of the name, address, and phone number of the designated Department of the Navy management representative who will represent the activity at the hearing.

13. Decision of the Secretary of the Navy (SECNAV)

a. Authority. The SECNAV has designated the Assistant Secretary of the Navy (Manpower and Reserve Affairs) (ASN [M&RA]) as the Director of Equal Employment Opportunity, and has delegated authority to the Director of EEO to issue final Department of the Navy decisions on discrimination complaints, based on recommendations prepared by the EARB. The Director of EEO has redelegated this authority to the Deputy Assistant Secretary of the Navy (Civilian Personnel Policy/Equal Employment Opportunity). The EARB directly serves written SECNAV decisions and copies of case records on complainants and completes Disposition of Complaint of Discrimination Forms (NAVSO 12713/3 [4/80]).

b. EARB Remands for Supplemental Investigation. If the EARB requires supplemental investigation, the request shall normally be remanded directly to the cognizant DCIC, with notice provided to the EEOO. The DCIC shall complete the supplemental investigation within 30 calendar days from receipt of the remand. The report of the supplemental investigation will normally be provided directly to the EARB with notice to the EEOO, but may on occasion, when directed by the EARB in the remand letter, be provided directly to the EEOO. If the EARB remand letter directs the report of the supplemental investigation be returned to the EEOO, it will also provide instructions for further processing.

c. Decision Without a Hearing. When there has been a request for a decision by the SECNAV without a hearing, the EARB shall review the case file, including the investigative report, and prepare a recommended decision on the merits.

d. Decision With a Hearing. When there has been a hearing, the recommended decision of the EARB shall include a copy of the EEOC administrative judge's findings and recommendations and a copy of the hearing transcript. When the EARB's recommended decision does not agree with the findings and recommendations of the EEOC administrative judge, the EARB's recommended decision shall set forth in detail, on the basis of the investigative report, applicable statutes and regulations, and applicable case law the reasons for rejection or modification of the findings and recommendations of the EEOC administrative judge. EEOC regulations at 29 CFR 1613.220(d) provide that when the administrative judge has submitted a recommended decision to the head of the agency, it shall become a final decision binding on the agency 60 calendar days after the agency receives the complete file and the recommended decision, unless the agency has already issued a final decision.

e. Finding of Discrimination. When the SECNAV decision finds discrimination, the decision letter will require any remedial or corrective action authorized by law determined to be necessary or desirable to resolve the issue of discrimination, and which promotes the policy of equal employment opportunity.

f. Attorney Fees. When discrimination is found, the SECNAV decision shall advise the complainant and representative that any request for attorney fees or costs must be documented and submitted within 20 calendar days of receipt of the decision. When the SECNAV decision provides for an award of attorney fees or costs, the amount of these awards shall be determined under Appendix G of CPI 713. When attorney fees or costs are not awarded to a prevailing complainant, the specific reasons for denying the award shall be set forth in the SECNAV decision.

g. Right of Appeal. The SECNAV decision shall inform the complainant of his or her time limits and right to:

(1) Appeal the decision to the EEOC ORA, and shall include the text of 29 CFR 1613.233(a) or (b), as appropriate.

(2) File a civil action per 29 CFR 1613.281.

14. Appeal to the EEOC Office of Review and Appeals (ORA)

a. Entitlement. A complainant may appeal a rejection, cancellation, a final decision on the merits, or a disallowance of attorney fees or costs unless the matter appealed is already pending an EEOC ruling.

b. Where to Appeal. Appeals shall be filed in person, or by mail, with:

Director, Office of Review and Appeals
Equal Employment Opportunity Commission
P.O. Box 19848
Washington, DC 20036

Complainants shall provide a copy of any appeal to EEOC, and of any brief supporting statement filed, to the EEOO of the activity or command where the complaint arose. A copy shall also be provided to the Director, OCPM, at the following address when a SECNAV decision has been issued. The Director, OCPM, will advise the Chair of the EARB when such an appeal is received.

Director, Office of Civilian Personnel Management
(Attn: OCPM 312)
Department of the Navy
800 North Quincy Street
Arlington, Virginia 22203

c. Time Limit. A complainant must file an appeal within 20 calendar days of receipt of a final Department of the Navy decision; 30 calendar days from the appeal filing date are allowed for the complainant to provide supporting information. The agency has 40 days from the appeal filing date to provide a brief or comments on the appeal. The agency has 35 days from the date of the EEOC's acknowledgement letter to submit the agency file. A request for an extension of the filing time limits from EEOC requires supporting arguments. An extension of the filing time for agency comments does not extend the time limits for submission of the agency file.

15. Implementation Procedures for Reopening and Reconsideration. Requests to reopen or reconsider ORA decisions shall be coordinated and submitted by the Director, OCPM. The Director, OCPM, may redelegate this authority on a case-by-case basis.

a. The Commissioners may, at their discretion, reopen and reconsider any decision if the Director, OCPM, or the complainant provides written arguments or evidence which tends to establish the following:

(1) New and material evidence is available.

(2) The previous decision involves an erroneous interpretation of law or regulation or misapplication of established policy.

(3) The ORA decision is of a precedential nature involving a new or unreviewed policy consideration that may have effects beyond the case at hand or is otherwise of such an exceptional nature as to merit the personal attention of the Commissioners.

b. When the Director, OCPM, fails to request a reopening within 30 calendar days of receipt of the ORA decision, or the Commission denies a request to reopen, there is no further right by the Department of the Navy to request a reopening.

16. Implementation of Final ORA Decisions

a. The Director of EEO shall order implementation of ORA remands or reversals.

b. When corrective action is ordered, the activity or command shall report, within 60 calendar days of receipt of the decision, to the ORA, with a copy to the Director, OCPM (Code 312), that corrective action has been taken.

c. The decision of the ORA is final but shall contain a notice of the right of the complainant to file a civil action.

17. Allegations of Discrimination or Retaliation in the Processing of a Pending Complaint ("Spin-off" Complaints)

a. Definition. A "spin-off" complaint arises when a complainant alleges that a pending complaint is being processed improperly or unfairly by the Department of the Navy because of the complainant's race, color, religion, sex, national origin, handicapping condition, age, and/or reprisal for his or her engagement in protected EEO activity. A "spin-off" complaint is not normally identical to the pending complaint, but generally alleges delay in processing the complaint, or bias during the investigation.

b. Policy. When a complainant has a complaint pending and files a new complaint alleging discrimination or retaliation in the processing of the pending complaint, the new allegation shall be consolidated with the pending complaint. The EEO shall notify the complainant in writing of the consolidation. The final Department of the Navy decision on the underlying complaint shall also address the merits of the allegation following the guidance of 29 CFR 1613.221.

c. Procedures

(1) Attempt to Resolve Informally. A complainant who is dissatisfied with the processing of his or her pending complaint, but who is not alleging discrimination as the basis for the dissatisfaction, should contact the activity or command DEEO. If the dissatisfaction is based upon actions personally involving the DEEO, the complainant should contact the EEO.

(2) Counseling Stage. When a complainant contacts an EEO counselor alleging discrimination concerning the manner in which his or her pending complaint is being processed, the EEO counselor will conduct precomplaint counseling. Every reasonable effort will be made to resolve the matter informally, including an explanation of the progress of the pending complaint.

(3) Formal Complaint. If, after counseling, a complainant files a formal discrimination complaint relating to the manner in which his or her pending complaint is being processed, the EEO shall consolidate the complaint with the pending complaint for processing. The EEO shall notify the complainant of the consolidation in writing. If the complaint meets the definition in paragraph 17a, above, for a "spin-off" complaint, it shall be processed as described herein, and the final Department of the Navy decision will include a decision on the merits of the "spin-off" complaint, per 29 CFR 1613.221.

(4) Investigation. The EEO shall request that the DCIC conduct an investigation into the "spin-off" complaint. The nature and extent of the DCIC investigation will depend on the

nature and complexity of the allegation. However, the investigation must result in the development of a sufficient factual record in the "spin-off" complaint.

(a) If the "spin-off" complaint is filed after the DCIC investigative report on the pending complaint has been forwarded to the EEOC, but before the pending complaint file has been forwarded to an EEOC administrative judge (AJ) in those complaints for which a SECNAV decision with a hearing has been requested, the investigative report shall be returned to the DCIC for such further investigation as is necessary to address the allegations in the "spin-off" complaint.

(b) If a hearing before an EEOC AJ has been requested, the AJ will address the allegations raised in the "spin-off" complaint and make a recommended decision on the merits. In some complaints there will be sufficient evidence in the file for this purpose. In others, additional evidence will be developed at the hearing. An AJ will not entertain "spin-off" complaints raised for the first time at the hearing (MD-107, Chapter 6, section 2).

d. Consolidation of Other Reprisal Allegations. Complaints of reprisal not included in the above description of a "spin-off" complaint will be processed as described in paragraph 13 of CPI 713. Department of the Navy EEOOs and EEOC AJs have authority under 29 CFR 1613.262(b) to consolidate, in appropriate circumstances, complaints of reprisal other than those raising issues of delay or bias in the processing of a pending complaint.

18. Age Discrimination. Discrimination complaints based on age may be made if employees or applicants are at least 40 years of age or older at the time the discriminatory act is alleged to have occurred. In lieu of the above method of complaint processing, the complainant may serve the EEOC with notice of intent to file a civil action and after 30 days proceed directly into Federal court.

19. Command Goals Regarding the Time Schedule for Processing Discrimination Complaints. Activities shall attempt to process complaints expeditiously within time frames in reference (a).

20. Class Complaints. Procedures for processing class complaints are described in reference (a).